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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

12 CR 185 (LAP)

5 JEREMY HAMMOND,

6 Defendant.

7 -----x
8 New York, N.Y.
9 November 20, 2012
10 11:38 a.m.

11 Before:

12 HON. LORETTA A. PRESKA,

13 District Judge

14 APPEARANCES

15 PREET BHARARA
16 United States Attorney for the
17 Southern District of New York
18 ROSEMARY NIDIRY
19 THOMAS G.A. BROWN
20 Assistant United States Attorneys

21 ELIZABETH FINK
22 MARGARET RATNER KUNTSLER
23 SARAH KUNTSLER
24 REBECCA HEINEGG
25 Attorneys for Defendant

ALSO PRESENT: ADAM JOHNSON, Esq., MCC
NICOLE BROWN-MORIN, Pretrial Services

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1 (Case called)

2 THE COURT: How would you like to proceed, Ms. Fink?

3 MS. FINK: I don't know, Judge. I want to proceed
4 with removing Mr. Hammond from custody and --

5 THE COURT: Ms. Fink, this is your application. How
6 do you want to proceed?

7 MS. FINK: Okay. It's my application. I would like
8 to move for bail for Mr. Hammond.

9 THE COURT: All right, ma'am.

10 MS. FINK: And if the Court would like, I will argue.

11 THE COURT: Yes, ma'am.

12 MS. FINK: Just up to whatever you want, Judge. I
13 can, for example, introduce you to where Mr. Hammond will live,
14 right, and I can talk about the circumstances.

15 THE COURT: I don't think I saw in the papers with
16 whom he proposed to reside. It said a lawyer.

17 MS. FINK: Yes, Judge. Let me -- would you mind, come
18 forward, please.

19 Your Honor, I'd like to introduce to the Court Michael
20 Smith. Mr. Smith is a member of this court.

21 You are, aren't you?

22 MR. SMITH: I am.

23 MS. FINK: Okay. He's a close friend of mine and all
24 of us. We have worked together. I'm a cooperating attorney of
25 the Center for Constitutional Rights. Mr. Smith is on the

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1 board of directors.

2 THE COURT: Good morning, sir.

3 MR. SMITH: Good morning, your Honor.

4 THE COURT: Thank you. Won't you have a seat.

5 MS. FINK: And he and his wife live in Battery Park
6 City and his wife has been his paralegal in his law office of
7 Michael Steven Smith and they'd take full custody of him.

8 The fact of the matter is, Judge, and I just want to
9 present the sureties because I don't really know how to proceed
10 here because of course we know it's the government's burden,
11 right, to demonstrate that he should not be released on bail.
12 And we've read the government's memorandum and it exposes the
13 government's problems.

14 First of all you see, Judge, that there are no
15 exhibits attached to this memorandum, for example, having told
16 you about his recidivism and his criminal record. They don't
17 provide you with the criminal record.

18 THE COURT: I understood that you had all received
19 copies of the pretrial services report?

20 MS. FINK: I did that this morning, Judge, just now --

21 THE COURT: Me too.

22 MS. FINK: -- minutes ago, and I've gone through it
23 and I can be said to be heard on this record because it's not
24 quite accurate. And, of course, the government's statements
25 themselves in their paper are totally inaccurate.

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1 For example, they tell you he had two supervised
2 release violations for he was on -- in 2006, the government put
3 Mr. Hammond on their terrorist watch list. As a result of
4 that, they had a lot of interest in him and in what I consider
5 to be inappropriate action based on their -- his avowed lack of
6 respect for the law or government institutions which --

7 THE COURT: Excuse, I see Mr. Johnson coming in.
8 Mr. Johnson is counsel at the MCC. You're welcome to sit at
9 the front table, sir, or anyplace you want.

10 Ms. Fink, go ahead.

11 MS. FINK: Mr. Johnson and Ms. Kunstler and I are old
12 colleagues.

13 So they informed the Court, for example, that he did
14 have federal charges -- and do we have another copy of this --
15 he did have federal charges, as the Court knows, and he did 18
16 months and he was on supervised release. And the government
17 while they were on supervised release went and searched his
18 house under their right to do that several times, and twice
19 they arrested him on the supervised release for possession of
20 cannabis. Well, the cannabis turned out to be sage.

21 And even though they tell you that there were seven
22 instances where violations of supervised release were filed,
23 none of them, Judge, were sustained. And I have provided the
24 Court with the last court appearance in front of Judge Zabel
25 and there are three pages and you can see that the government

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1 moves for supervised release to be terminated and you can see
2 the interchange between the Court and Mr. Hammond.

3 THE COURT: What about the information in the pretrial
4 services report indicating that on several occasions
5 Mr. Hammond failed to appear for various hearings and that
6 warrants were issued?

7 MS. FINK: Your Honor, I've spoken to Mr. Hammond
8 about that and the Court will notice that there really is one
9 and the date of that is July 21, 2006. And Mr. Hammond tells
10 me that he failed to appear to see his probation officer.

11 And this was in state court, right?

12 He spaced it, Judge.

13 THE COURT: He what?

14 MS. FINK: He spaced it.

15 THE COURT: What does that mean?

16 MS. FINK: He didn't go to visit his probation
17 officer. He then was arrested at another hearing and they said
18 you have a probation warrant. He went to court, right, and the
19 judge dismissed the warrant and told him to continue on
20 probation. And he continued on probation and his probation was
21 dismissed four months after that incident.

22 THE COURT: Top of page 4, following the September 29,
23 '09 conviction of two counts of mob action, etc., this offense
24 occurred while the defendant was on supervised release.

25 MS. FINK: Yes, Judge.

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1 THE COURT: In addition, during the tenure of this
2 case, warrants were issued for failing to appear in court.

3 MS. FINK: Judge, if you look at the court appearance,
4 when supervised release was ended, you'll see that the federal
5 government and the state were working together. What he was
6 convicted of, right --

7 THE COURT: I'm asking about the warrants at the
8 minute. Apparently, a warrant was issued on the '06 warrant.
9 Then on --

10 MS. FINK: And I'm telling you --

11 THE COURT: -- '09, it says warrants were issued for
12 failing to appear.

13 MS. FINK: Well, Judge, first of all, on the '06, I'm
14 telling you that that warrant was dismissed.

15 THE COURT: Okay, but it was issued because he didn't
16 show up.

17 MS. FINK: Judge, and then he showed up and it was one
18 failure to meet with the probation officer.

19 THE COURT: Okay. So that was one.

20 What about the '09 warrants were issued for failing to
21 appear in court, true or false?

22 MS. FINK: I don't know.

23 THE COURT: All right.

24 MS. FINK: I certainly don't have the warrants. The
25 government didn't provide them with me. I certainly don't have

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1 anything which reflects that those warrants were sustained.

2 THE COURT: Well, but you don't have anything they
3 weren't either. This is a pretrial services report. We rely
4 on these all the time.

5 MS. FINK: I understand, Judge, but I just saw it.

6 THE COURT: Yeah, well, so did I, but I read it.

7 MS. FINK: Right. So we're both looking at it.

8 And there's no question that he went -- he got
9 convicted in federal court in 2006. He appeared at all times.
10 He pled guilty, he was sentenced, and he self-surrendered.

11 THE COURT: Okay. Nobody is complaining about that.
12 That's not in dispute.

13 MS. FINK: Then, because he's a radical, Judge,
14 there's no question that he's a dissident. There's no question
15 that he's a political activist.

16 THE COURT: That's not an issue either.

17 MS. FINK: Right. That's true.

18 When an action took place in Chicago, he was convicted
19 with a whole bunch of other people in what is the Chicago crime
20 which is mob action. And what he did, Judge, he burned the
21 Olympic flag and he got 18 months' probation. And together,
22 the federal government, and you can see that the federal
23 government was on top of that probation.

24 THE COURT: What does that mean?

25 MS. FINK: Well, read the end of supervised release,

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1 the government's statement about --

2 THE COURT: Is there something you want to tell me?
3 What does it say?

4 MS. FINK: You see, Judge, on page 2, and this is a
5 violation of supervised release hearing, line 11, Mr. Fox,
6 who's a United States attorney, tells the court that he's on
7 probation, including strict probation, that he's been fully
8 compliant, including dropping clean in his drug test weekly.
9 And the only thing he's tested positive for, Judge, is
10 cannabis, marijuana.

11 THE COURT: Okay, but that's not fully compliant, and
12 we don't know how long this relates to.

13 Look, Ms. Fink.

14 MS. FINK: Yeah.

15 THE COURT: Far as I can tell, there are at least two
16 occasions when warrants were issued for Mr. Hammond's failure
17 to appear. There seem to be several occasions when crimes were
18 committed while on either probation or supervised release.

19 Am I wrong about those things?

20 MS. FINK: There's no question that he continued to
21 participate in political activity which resulted in him being
22 arrested.

23 THE COURT: While on supervised release.

24 MS. FINK: Yes.

25 THE COURT: Okay. So he was arrested while on

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1 supervised release, apparently convicted of certain things,
2 right, like mob action.

3 MS. FINK: The only thing that he was convicted of is
4 mob action.

5 THE COURT: Okay.

6 MS. FINK: One time.

7 THE COURT: So what I said is correct. Warrants were
8 issued for failure to appear and convictions ensued while on
9 supervised release or probation. Right?

10 MS. FINK: Well, Judge, I don't know because I haven't
11 seen the warrant and I don't know what happened when he went to
12 court.

13 THE COURT: Okay, fine.

14 Anything else on this?

15 MS. FINK: Based on this, based on the presentence
16 report -- pretrial submission, all of this I would have to
17 check. I would have to, for example, where it says -- none of
18 this resulted in any sentence.

19 THE COURT: So what?

20 MS. FINK: For example, circumstances, warrants were
21 issued for failure to report.

22 And then we have in 2010 a violation, and 17 days
23 later he went into court and what happened was the original
24 terms of probation were ordered to continue. So that warrant
25 was dismissed.

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1 In July of 2011, he went into court again on a second
2 violation of probation and 19 days later, the original terms of
3 probation were ordered to continue and the warrant was
4 dismissed.

5 So you don't know what the circumstances are of the
6 warrant because the issue here, Judge, is in 2006, based on the
7 fact that this man is doing computer stuff and is a well-known
8 activist, the government, which is the participant in this
9 crime, that's the problem here, Judge.

10 THE COURT: Ms. Fink, please try to say something that
11 is relevant to what we are here to discuss today.

12 MS. FINK: Well, it seems to me what we are here to
13 discuss, Judge, is whether there are circumstances and
14 conditions.

15 THE COURT: Okay. Then don't talk to me about the
16 government being committing this crime.

17 MS. FINK: I didn't say that, Judge. I said they
18 participated in this crime.

19 THE COURT: Okay, fine.

20 MS. FINK: You know, I mean, and they're going to
21 admit to you that that's true, Judge.

22 THE COURT: Ms. Fink, the bail statute tells us very
23 clearly what it is we should be considering in this
24 application. Let's try to talk about that.

25 MS. FINK: Okay, Judge. It is the government's

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1 burden, No. 1.

2 THE COURT: I already said that. I'm not arguing with
3 you.

4 It's your application. Is there anything else you
5 want to tell me before I call on the government?

6 MS. FINK: Yeah.

7 THE COURT: What do you want to tell me?

8 MS. FINK: There's no way I can prepare for this trial
9 when this man is in prison. That's what I want to tell you.

10 THE COURT: Okay. I understood --

11 MS. FINK: There is no possibility that we can be
12 given our rights under -- to look at the evidence against us
13 and present evidence in our thing under the constraint.

14 THE COURT: What do you mean in our thing, what does
15 that mean?

16 MS. FINK: To present witnesses on our own behalf,
17 right, based on this enormous amount of evidence.

18 THE COURT: Ms. Fink, the papers seem to say that the
19 government has offered to make available the material in a more
20 easily accessible format and to work with you in talking with
21 the folks at the MCC to try to make it more accessible to the
22 defendant, and the papers certainly seem to say that you didn't
23 take them up on their offer to work with you.

24 Is that true or false?

25 MS. FINK: False.

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1 THE COURT: Okay. When did you call them and say what
2 you said?

3 MS. FINK: I have no interest in doing that, Judge.

4 THE COURT: Then why is it false?

5 MS. FINK: Judge, I am the defense lawyer here.

6 THE COURT: I got that.

7 MS. FINK: First of all, as the Court knows, I've been
8 ill and I continue to be ill.

9 THE COURT: I think you have people who work with you
10 who could have called.

11 MS. FINK: Exactly right.

12 THE COURT: Did they call?

13 MS. FINK: Then let me make my point here. In June of
14 2011, '10 or '11, 2011, right, the government arrested Hector
15 Monsegur, who is the complaining witness -- the cooperating
16 witness in this case. His name is Sabu. He then became a
17 government witness and he became a government agent. He's not
18 a coconspirator in this case, by no means, because at the time
19 that he was creating --

20 THE COURT: I'm sorry, the question I asked was
21 whether you had or people working with you had reached out to
22 the government -- excuse me.

23 MS. FINK: Excuse me.

24 THE COURT: -- in an attempt to accept their offer to
25 work with you in making the material more accessible to

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1 Mr. Hammond.

2 MS. FINK: Your Honor.

3 THE COURT: That's the question I asked.

4 MS. FINK: I determined based on my own life as a
5 defense lawyer that there is nothing that the government could
6 do for me that would aid my defense, nothing, because the
7 government --

8 THE COURT: That's all I wanted to know, that the
9 answer is you didn't call them.

10 MS. FINK: No, I didn't. I spoke to them. I did call
11 Mr. Tritz and I did extensively deal with Emma Greenwood, who
12 is the CJA coordinator on this kind of information.

13 MS. S. KUNSTLER: Your Honor, what the government
14 offered to do for us is to decompress the data on the drive.
15 That is something that we, in speaking with Access Data, who
16 will help us DeNIST the drive, as discussed in our papers, even
17 uncompressed, it's still a lot of it unintelligible to us and
18 still a lot of it not useful to us. And separating the wheat
19 from the chaff in what's important to the case and what we need
20 to focus on is part of what Access Data does for defense
21 lawyers in these cases.

22 So it hasn't been a question of needing someone to
23 uncompress the files for us. It's been a matter of having our
24 client available to us to make intelligible the information.

25 THE COURT: All right. Then the question and the same

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1 question to Ms. Fink was did anyone reach out to someone,
2 either the government as a go-between or to the MCC, to ask
3 about having the material made accessible to Mr. Hammond.

4 MS. S. KUNSTLER: Separate and apart from being with
5 us -- our understanding under the protective order was that he
6 was not to have it separate and apart from us.

7 We have been working -- I have spoken to Adam Johnson
8 about the types of files, whether the computers in the legal
9 visiting room could access those files. He sent me a list of
10 what files the machines could open. We've been endeavoring to
11 go to those visiting rooms and review what we can with him in
12 the time we have. But beyond that, it was not our
13 understanding that the government could assist us in making the
14 files available to him outside of our presence. It was our
15 understanding pursuant to the protective order that was all we
16 could do.

17 THE COURT: On the protective order, counsel.

18 MS. NIDIRY: Yes. So the protective order was
19 obviously something that they agreed to and we had some
20 continuous discussions about it. One of the issues was raised,
21 this was raised about how to review it, and instead of saying
22 just like the attorney could be present, we agreed that the
23 attorney and staff could be present with the defendant.

24 But we also have a provision in there and we have
25 expressed to them that if there are future modifications that

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1 are needed in order to make this more workable, we are willing
2 to work with you. And this is the first time, within the last
3 two weeks when we saw these papers that we understood that
4 there was an issue with regard to accessing this volume of data
5 at the MCC and that the issues related to both Mr. Hammond's
6 access to computers at the MCC, which is a different issue
7 which I think we've addressed based on my contacts with
8 Mr. Johnson last week, and based on the way in which the
9 attorneys can work with the defendant in terms of reviewing
10 these materials, which is also something we are happy to work
11 with them.

12 There is no reason as far as we can see that in any
13 case that a defendant who's detained, just because he's
14 detained, should not be able to review the discovery adequately
15 with the attorneys; and it's definitely something that the MCC
16 and the government and defense lawyers have worked on many
17 other cases in the past. There's a lot of electronic material
18 in a lot of cases, and detained defendants are able to review
19 it with counsel and, you know, the cases proceed.

20 And there is nothing as far as we understand that is
21 particularly unusual about this case except possibly the fact
22 that because the case involves a defendant who was involved in
23 an enormous amount of hacking, there's a lot of electronic
24 material. But, again, that's obviously something --

25 THE COURT: Let me just be sure I understand. So far

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1 as you are aware, provision can be made for Mr. Hammond to
2 review discovery material which is electronic at the MCC both
3 in the presence of counsel or staff and by himself.

4 MS. NIDIRY: By the terms of the protective order --

5 THE COURT: We can fix the protective order. I'm
6 asking you what can be done.

7 MS. NIDIRY: Yes, yes. As far as I understand, from
8 an equipment and Mr. Hammond's access to computers and all
9 those type of issues, those have been resolved, we think, we
10 hope, and if they haven't been, we'll make sure that they are.

11 MS. S. KUNSTLER: Can I address that just briefly.

12 We spoke with the government about this immediately
13 prior to the proceeding. We represent in our papers that
14 Mr. Hammond had no computer access in the jail. The government
15 contacted I think Adam Johnson of the BOP who told them that he
16 did. I think there may have been a disconnect between Adam
17 Johnson and BOP staff because Mr. Hammond was never in fact
18 allowed to use computers at MCC.

19 Yesterday when we told him -- this is something he's
20 complained about to his counselors and something, to be honest,
21 that we thought was consistent with the protective order that
22 we agreed to which is that he couldn't have this -- Judge, the
23 whole point of the protective order was that he couldn't have
24 this material in the jail. To say now they'll work with us to
25 let him have in the jail without us kind of eviscerates the

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1 whole meaning of the protective order in the first place. The
2 government represented that these materials, he couldn't have
3 them on his own in the jail and we shared them with him to the
4 best of our ability.

5 But yesterday when we informed Mr. Hammond the
6 government's papers stated that the BOP was representing that
7 he could actually use the computers, he went to his counselor
8 at the jail and told him, oh, they're trying to fix that now.
9 There's been a big hullabaloo here the past couple days trying
10 to get that to start. And they took him to a computer. He
11 attempted to log in. It still wasn't working as of yesterday.
12 But the BOP, in the actual functioning BOP where he lives,
13 hasn't provided him access to computers.

14 THE COURT: Of course, we haven't raised this except
15 in the last couple days. So, here we are.

16 MS. FINK: No, no, no.

17 THE COURT: Mr. Johnson, thank you for being present,
18 sir.

19 Is it possible for Mr. Hammond to have access to his
20 electronic discovery material both -- assuming the protective
21 order is fixed -- both in the presence of counsel and staff and
22 for his own review?

23 MR. JOHNSON: Yes, and that's what I wanted to
24 explain.

25 The issue that he was having with the computers was

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1 the electronic law library computer which was tied to True
2 Links, which is the email computer, which is the one he can't
3 have access to True Links. The problem we were having was
4 getting those two separated. What he had to log in to was
5 logging him in for electronic law library access.

6 There's a wholly separate computer for digital
7 discovery that is basically just a basic computer not plugged
8 into anything but the wall for electricity so that you can
9 review any digital discovery you have.

10 As Ms. Kunstler represented, we have been going back
11 and forth trying to discuss what programs we have on our
12 computers, what programs they have. They may have some
13 programs that aren't on our computers, and we're happy to work
14 with them, with our computer services manager, to determine
15 whether there's certain software we can put on our discovery
16 computers.

17 But, again, there's two separate computers. There's
18 no individualized log in for the discovery computer. So he
19 shouldn't have any problem with the discovery computers and,
20 obviously, if he does, he can raise it with the unit and bring
21 it to me and I'll get it taken care of.

22 THE COURT: Thank you, Mr. Johnson.

23 Anything else on this issue?

24 MS. FINK: Yes. First of all, Judge, Ms. Nidiry,
25 Mr. Brown and I speak often, so for them to say that I've never

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1 informed them that I've had trouble with the discovery.

2 THE COURT: All right. Is there anything more to be
3 said about it? It can be done. We know how to do it.

4 MS. FINK: Yes. Let me make my record here.

5 THE COURT: You just heard Mr. Johnson.

6 MS. FINK: I love Mr. Johnson. He loves me.

7 THE COURT: Well that's a relevant fact.

8 MS. FINK: MCC and the Bureau of Prisons' ability,
9 right, to deal with defense counsel is one of the main subjects
10 of CJA lawyer and you know it, Judge. That prison --

11 THE COURT: I'm sorry, Ms. Fink, it would be so
12 helpful if you would keep a civil tone of voice.

13 MS. FINK: I'm sorry, Judge.

14 THE COURT: Yes, ma'am.

15 MS. FINK: It's very hard for defense lawyers to exist
16 in this district because of this --

17 THE COURT: Ms. Fink, that's not relevant to the bail.

18 MS. FINK: For example, yesterday --

19 THE COURT: Excuse me, please keep a civil tone of
20 voice.

21 MS. FINK: Excuse me. Yesterday, Judge, I sent my
22 paralegal to meet with Mr. Hammond, right. In order to prepare
23 for this trial, she would have to be in there every day. She
24 waited to get into the facility for one hour, and when she get
25 up to the third floor, she waited another three-quarters of an

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1 hour. So one hour and three-quarters was totally wasted. It
2 happens all the time. There are very few spaces up in MCC for
3 people to meet with their lawyers, lawyers continually billing
4 CJA as they do --

5 THE COURT: Ms. Fink.

6 MS. FINK: -- sit there. Judge, you want me to
7 prepare. I'm telling you we can't prepare while he's in
8 prison.

9 THE COURT: Anything else on that issue?

10 MS. S. KUNSTLER: I have one more thing on that issue
11 which is it's not that this hasn't been raised with Adam
12 Johnson either. Apart from my conversation with him about the
13 types of files that could be reviewed on that computer, our
14 office had conversations with him about the parameters of his
15 computer usage in the visiting room, and we were informed that
16 it would be better that we should be the people operating the
17 computer, that he shouldn't touch the computer but that we
18 should open the discovery and show it to him.

19 All of this, you know, consistent with his denial of
20 computer access outside of our presence, and the computer
21 access outside of our presence is also somewhat irrelevant
22 without his discovery which he hasn't had pursuant to the terms
23 of the protective order.

24 THE COURT: We just ironed this out.

25 MS. FINK: No, you didn't, Judge.

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1 THE COURT: What do you want now? Apparently we can
2 do this. Because it wasn't raised until recently, it's not all
3 in place.

4 But is there an additional fact on this that you want
5 to tell me about?

6 MS. FINK: Well, Judge, with all due respect, you're
7 making statements which we oppose.

8 THE COURT: I'm sorry?

9 MS. FINK: You have to understand, you say that MCC
10 can do it. I'm telling you that MCC --

11 THE COURT: I just heard Mr. Johnson.

12 MS. FINK: I've heard MCC tell me I can do you can't
13 believe the number of things since it opened in 1975.

14 The fact of the matter is that MCC cannot do it and
15 what's going to happen is they're going to tell you they can.
16 We're going to send people and we cannot be prepared. What we
17 have here, Judge, is an indictment where the two counts,
18 Arizona -- and excuse my tone, Judge. You know, I have I'm
19 sorry to tell you a serious medical problem of uncontrolled
20 blood pressure that I'm dealing with.

21 THE COURT: I'm sorry to hear that, ma'am.

22 MS. FINK: Lots of doctors on it and I'm in court only
23 by sufferance because I'm supposed to be either at my
24 cardiologist, my nephrologist or my whatever. So if I sound
25 whatever, I've got a lot of -- I've got a serious, serious

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1 medical issue I've got to deal with.

2 But the fact of the matter is here that I can tell you
3 we cannot prepare because what this case is about is the
4 government participating at every stage in what was happening,
5 every stage.

6 THE COURT: I'm not sure one follows from the other.

7 MS. FINK: Well, because what is the government
8 doing --

9 THE COURT: I can't prepare because there was a CW.

10 MS. FINK: No. There wasn't a CW.

11 THE COURT: But it doesn't follow logically unless
12 there are more facts.

13 MS. FINK: Let me try to explain what I'm trying to
14 say, Judge.

15 If you look at the chat rooms and the amount of
16 information that's going back between these two people, one
17 half of it is the government and the other part of it are the
18 other coconspirators who don't know that they're working with
19 the government. What the government is doing, how Stratfor got
20 selected, all of the stuff that got done around Stratfor and
21 Arizona, how much is the cooperating witness and how much is
22 Mr. Hammond. If what you see is just the same thing as the
23 Newburgh case, Judge.

24 THE COURT: I don't understand why you're telling me
25 this in the -- excuse me.

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1 MS. FINK: Gigabytes.

2 THE COURT: -- in the context of I can't prepare. If
3 what you're telling me is you're going to have an entrapment
4 defense, fine. Go at it.

5 Why does that mean you can't prepare the case?

6 MS. FINK: Because I can't because there's how much
7 material, a million gigabytes? How many gigabytes of the
8 chats?

9 MS. S. KUNSTLER: It's not gigabytes. It's more about
10 hundreds of thousands of pages of documents.

11 What Ms. Nidiry said about how this is no different
12 than any other case that has thousands of pages of documents is
13 just simply not true here. We've had lots of cases with
14 thousands upon hundreds of thousands of documents and those are
15 cases, in those cases it's a question of reading wiretaps or
16 reading line sheets and these are documents we know how to
17 read. We understand how to figure out what's going on. These
18 files are sophisticated. This discovery is hard to understand.

19 THE COURT: And so what are you asking me for?

20 MS. S. KUNSTLER: What it requires, even if he's
21 reviewing them on his own, what it really requires in more than
22 any other case we've worked on is sitting by his side and
23 having him deconstruct it for us and help us make sense of it.
24 As lawyers, we don't understand it. We don't have that
25 sophistication. And when he may be reviewing it on his own, if

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1 that does work, which, you know, in the future, but that hasn't
2 been the case up to now, but we actually really need that time
3 together in order to put together a defense.

4 And on top of it being very expensive, it also doesn't
5 work. Last week, several times colleagues of mine went to the
6 MCC. There were several days -- maybe Mr. Johnson can speak to
7 this -- where there were morning freezes where people couldn't
8 get in and had to walk away. Yesterday I went to see someone
9 and had to leave without seeing them. That facility has lots
10 of very high secure inmates that get moved. And it's as a
11 practical matter very difficult to get in there and very
12 difficult to get in there to spend the type of time that needs
13 to be spent.

14 THE COURT: We know all about it. The nature of the
15 facility is a pretrial facility. It is in an urban area. It
16 is overcrowded, but that is because it is convenient to have
17 pretrial detainees here. It takes no time to get into
18 Otisville compared to this, but you don't want to go to
19 Otisville. I know that.

20 MS. FINK: We did.

21 THE COURT: So what's the deal.

22 All right. This is not the only factor, right?

23 MS. FINK: Well, the other factor is there are
24 conditions, right, that can be put on his release which make
25 him -- that he should be released on bail, Judge.

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1 THE COURT: \$30,000 probably isn't one of them.

2 MS. FINK: What?

3 THE COURT: The government argues in its papers that
4 \$30,000 worth of equity is insufficient.

5 MS. S. KUNSTLER: These are two people's homes that
6 they're willing to put up. That's the equity amount on them,
7 but it is moral suasion on him that two people may lose their
8 homes if he doesn't show up to court regardless of the equity
9 value. He has, you know, people that are important to them,
10 his mother and grandmother and relatives that are willing to
11 put their financial security on the line and who believe that
12 he's going to show up. This is not nothing.

13 MS. FINK: And this is a person who always has shown
14 up, Judge. He self-surrendered.

15 THE COURT: Except for the warrants.

16 MS. FINK: We don't know what those are, and it's for
17 absolutely minor crimes. He has no passport. He has no
18 history of ever fleeing, right. He's a political person
19 involved in a political fight with the government. This
20 happens since the beginning of this country.

21 THE COURT: I'm sorry, what does that have to do with
22 this?

23 MS. FINK: That's what this case is about. It's a
24 political case.

25 THE COURT: I didn't notice that in the factors that

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1 the Bail Act says we are to review.

2 MS. FINK: Well, the factors of the Bail Act is
3 whether there are conditions or conditions that can assure his
4 return to court.

5 THE COURT: That's the question. The factors in the
6 Bail Act are the nature and circumstances of the offense, the
7 weight of the evidence, etc., his prior record, danger to the
8 community -- those are the factors in the bail application.

9 MS. FINK: First of all, if you look at his prior
10 record, it's cannabis and demonstrating. We're not talking
11 about the usual case that comes in here where I have a client
12 with 20 violent crimes, right, ever since he was 14. We have
13 no violent crimes there, right. We have political crimes that
14 you can call violent crimes like mob action, but he didn't do
15 anything, right. You don't have any allegation of him ever
16 doing anything that has to do with violence, none, right. You
17 have him returning because politically this is what he does.
18 He made a decision that he doesn't like the United States
19 government. He doesn't like what they do.

20 THE COURT: What about the danger to the community
21 that is set out in the government's case about the hacking
22 activities, stealing people's credit cards, identities, billing
23 thousands of dollars, what about that danger to the community?

24 MS. S. KUNSTLER: Your Honor, I'd like to address that
25 if I may.

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1 This is not a presumption case. There's no
2 presumption of danger for the crime he's charged with. But
3 more than that, this district all the time lets people out on
4 bail charged with computer crimes, charged with, you know, I
5 spoke with -- I don't know if he's here, but I spoke with John
6 Moscato, who's one of the officers in charge of supervising
7 people who require computer monitoring. A large number of the
8 people that he monitors are people who have committed alleged
9 sex offenses over the internet. And these people are regularly
10 let out, allowed to use the computer and have their computer
11 usage monitored.

12 It can be said in those cases that some of these
13 people are people with compulsions, with predilections to
14 continue offending. It's part of the issue of sex offenses.
15 Yet these people are routinely let out and that condition is
16 applied. That condition, the condition of computer monitoring,
17 you know, deals with that danger.

18 THE COURT: I think the government in its papers
19 argued that this case is different because of this defendant's
20 activities in the past in hiding his identity, hiding the
21 source of his computer activity, and various other highly
22 sophisticated activities that are not what we see in the
23 computer sex defendants. They do it on their own computers in
24 some name, but they're not hiding their identities in the
25 sophisticated manner that this defendant has.

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1 MS. S. KUNSTLER: Well, if pretrial services felt that
2 they were unable to effectively monitor his computer usage
3 given the crime he was charged with --

4 THE COURT: I think it's his past activities rather
5 than the crime he's charged with.

6 MS. S. KUNSTLER: Sorry, his past activities, your
7 Honor, then he could not use computers. That could be a
8 condition of his release. It's much stronger than the
9 condition applied to people charged with computer sex offenses,
10 but it's a condition that would eliminate this danger.

11 MS. FINK: Judge, he was accused of a computer crime
12 in 2006. During the entire pendency of that case, which was a
13 year he was on bail, right, there's no any allegations of him
14 doing anything. He was sentenced. He was allowed to be out
15 after sentence. He self-surrendered. He was then on
16 supervised release.

17 THE COURT: That was his first computer crime, right?

18 MS. FINK: That's it, Judge.

19 THE COURT: We've got that one under our belts and now
20 we have another accusation here.

21 MS. FINK: Yes, we have another accusation, and I'm
22 saying that we haven't had the ability, right, to analyze all
23 the evidence and to --

24 THE COURT: I know that. That's a different issue.
25 We've already done that.

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1 MS. FINK: It's the bail.

2 So let me just propose this to your Honor. In 1988, I
3 was in front of the Honorable William G. Young in the District
4 of Massachusetts on a seditious conspiracy case involving two
5 counts of RICO. My client had been in prison and Judge Young
6 bailed her to my custody, which is what I'm essentially, bailed
7 her to the lawyers. So, she had to live in my house.

8 And we are essentially asking the same situation. I
9 did not come in March when I was assigned to this case and say
10 I need bail, right, because I had no ties. I had no place to
11 put him. I had no situation. I didn't know what the case was
12 about. I didn't understand how to try it -- all of those.

13 Now I'm in a different situation. I have assessed all
14 this, Judge, and I'm telling you there's no possibility given
15 MCC that I can prepare this case with this man in prison,
16 right. I can't do it. I'm going to do an inadequate job, and
17 I'm going to do a job that would be nothing compared to what I
18 would be to have him in my office at a desk which I have him
19 and he and I sitting down and Ms. Ratner and Ms. Heinegg and
20 Ms. Kunstler and Ms. Kunstler also is my paralegal -- where are
21 you, Emily? Stand up -- and work with him on this enormous
22 amount of material.

23 THE COURT: Okay. Anything else?

24 MS. FINK: And be able to try this case in front of
25 you in September. But if I don't get that and he stays in

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1 prison, first of all, I'm going to put bills to you of tens of
2 thousands of dollars from whatever it's called.

3 What's it called?

4 THE COURT: CJA.

5 MS. S. KUNSTLER: Access Data.

6 MS. FINK: And all this. It's going to cost a
7 fortune, Judge. And every single time that we're made to wait
8 at MCC is another 250 CJA dollars.

9 THE COURT: I get it. Anything else before I hear
10 from the government?

11 MS. FINK: He's not going to go anywhere, Judge.
12 We're going to take custody of him and assure you that we will
13 be in court ready to fight this case politically when you
14 order. But if you keep him in the jail --

15 THE COURT: I'm sorry, fight this case politically?
16 We have trials --

17 MS. FINK: I fight every case politically, Judge. I
18 do.

19 THE COURT: That's probably not going to help your
20 cause by telling me that.

21 MS. FINK: You see me.

22 THE COURT: We have rules of evidence here.

23 MS. S. KUNSTLER: Your Honor, I want to speak to the
24 dangerousness issue which is, as this Court is aware, the
25 standard for dangerousness is clear and convincing.

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1 Mr. Hammond, I think, under that standard it is relevant that
2 while released on bail the last time, Mr. Hammond fulfilled all
3 of his obligations. I also think it's relevant that although
4 he may have had sensitive information in his possession, he
5 never used it.

6 THE COURT: I thought I saw something in the paper
7 about his having charged hundreds of thousands of dollars on
8 other people's credit cards.

9 MS. S. KUNSTLER: No.

10 Is that other codefendants? Yeah.

11 So when nobody was watching him, he didn't do it.
12 When he was being watched before in the prior case, he didn't
13 do it. I don't think that meets the clear and convincing
14 standard.

15 And, furthermore, not having access to a computer
16 while he is outside other than reviewing discovery in our
17 office, you know, militates any possible lingering danger there
18 might be.

19 But I think that there's more than enough evidence
20 here to support that he's never been such a danger in the past,
21 that he's been mindful and followed these conditions in the
22 past and can do so again.

23 THE COURT: Thank you.

24 MS. FINK: And, your Honor, I would point out also
25 that we're all officers of the court, all of us, Mr. Smith is,

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1 and we have an obligation to the Court as being officers of the
2 court. We understand that. I've done this, as I've said, I
3 did this in front of Judge Young. You can call him and he'll
4 tell you all about it. Send him my best regards. And in cases
5 like this, I've done this before. He's not going anywhere.
6 He's coming with us. And we're going to have an ability to
7 fight this case. And there are lots of conditions that will
8 assure his presence in this court, and the government has not
9 given you one piece of paper.

10 THE COURT: I want to call on them when you people are
11 finished. Let me know when you're finished.

12 MS. FINK: Thank you, Judge. I'm finished for the
13 moment.

14 THE COURT: Ms. Nidiry, counsel says that the fact
15 that there were a bunch of violations of supervised release and
16 violations of parole filed is insignificant because none of
17 them were ever upheld. That's one. I'd also like you to
18 address the warrant question and the dangerousness to the
19 community question.

20 MS. NIDIRY: Well.

21 THE COURT: Please.

22 MS. NIDIRY: First of all, with regard to his repeated
23 violations, I think it's fairly clear from his criminal history
24 that he has a history of violating court directives. He was
25 sentenced to 18 months' probation in November 2010 for a 2009

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1 arrest. This instant crime was commenced in the spring of
2 2011. That November 2009 arrest for which he was convicted was
3 a violation of the supervised release that had been imposed in
4 the prior federal conviction. There's a Cook County probation
5 warrant. There are parole violation warrants. There's just
6 extensive record of repeated violations.

7 With regard to --

8 THE COURT: Ms. Fink says that the parole and
9 probation violations were not substantiated.

10 MS. NIDIRY: Some of them he's convicted. He pleads
11 guilty. Like, for example, the November 2009 arrest, that's a
12 conviction where he pled guilty.

13 THE COURT: While on?

14 MS. NIDIRY: Supervised release.

15 THE COURT: Supervised release for the federal crime?

16 MS. NIDIRY: Yeah, federal. Okay. So, in other
17 words, the conviction itself was sustained because he pled
18 guilty. He was convicted. Then he's sentenced to probation.

19 Then there are warrants issued for failing to appear
20 in court, and Ms. Fink actually went through a litany of those
21 where the warrant was issued to a few weeks later he actually
22 does appear and then another warrant and probation is
23 reimposed. Another warrant is issued a few weeks later. He
24 appears. Probation is imposed.

25 But the fact is there's no question that the initial

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1 warrant was issued for failure to appear. The fact that
2 eventually he appears is still violating the directions of the
3 court.

4 And in the pretrial services report here it says that
5 in February of 2012, defendant didn't report to probation for
6 the entire month, that he owed court fines and fees. And it
7 says to inform that the defendant is forthcoming with his
8 affiliation with an anarchist group.

9 There's just from 2006, at least, to the present, a
10 history of being on court supervision and violating it and
11 violating it either by failures to appear or convictions for
12 disorderly conduct or mob action.

13 Violation of probation was filed on March 1, 2012
14 because he didn't report to probation for the month of
15 February 2012. And then I think that that there was also
16 another one it looks like that was filed, a warrant issued
17 March 5 of 2012, maybe in connection with this case. That I'm
18 not sure about. But there's just this history of doing all of
19 that.

20 And here we have what is significantly different from
21 the prior federal offense which, you know, he basically was
22 convicted, sentenced to 24 months, spent time in for the exact
23 same type of conduct that he's charged with here. And then was
24 on supervised release, violations of the supervised release, a
25 conviction. He's sentenced to probation. Supervised release

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1 is terminated, but then there are a series of probation and
2 probation violations. So that's between 2006 and the present.
3 So, there is a history of just repeatedly being given
4 directions by the court and disobeying them or not heeding
5 them.

6 There's also a record of drug use that appears to be
7 fairly significant. I think that counsel, I'm not sure that
8 counsel addressed it or suggested it was minimal, but I think
9 probation reports that he reported he uses marijuana every
10 other day and his last use occurred on the day of his arrest
11 and he's been using it since the age of 16. If that is the
12 pattern that he has had since 16, he's been doing it while he's
13 been on supervised release and probation.

14 In addition to that, in this case we have a great
15 incentive for him to flee compared to his official federal
16 conviction. He's facing substantially more time both because
17 of his extensive criminal history but also because of the
18 nature of these charges -- the loss amount, the significant
19 scope of the number of victims, all of that. So he's facing
20 substantially more time than he was in that case.

21 THE COURT: What I understood your papers to say was
22 that the statutory maximums were something like 37 years,
23 whereas if one looked at guidelines only we were at 360 to
24 life.

25 MS. NIDIRY: Yes.

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1 THE COURT: Am I correctly understanding your papers?

2 MS. NIDIRY: That's correct.

3 Now, with regard to the danger issue, I think that the
4 danger is not simply using credit cards. The danger is
5 revealing all of these people's credit cards. And there is no
6 question, I think, even in the prior case, he admitted that he
7 stole credit card information along with other personal
8 information.

9 Now, his mitigating factor that he claims, if you
10 will, is that, well, I didn't actually end up using them as I
11 intended to, which is, you know, great that you didn't use it.
12 But the fact is that you stole it. And in this case, the
13 violations include that he disseminated it and it leaves it out
14 there for everyone else who's looking on the internet for
15 stolen credit cards to use it.

16 So I don't think it mitigates the danger to say he
17 himself didn't use it the last time when what he has done and
18 what he's charged with doing here is stealing and
19 disseminating, you know, personal information including
20 addresses, personal emails, the identities of people, law
21 enforcement officers, family members, their phone numbers, and
22 their personal credit card information. I mean that's a lot of
23 confidential information that nobody would want disseminated.

24 And whether or not the person who sends it out there
25 actually makes charges, this case, our evidence shows that

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1 hundreds of thousands of dollars of charges were made and we
2 have numerous conversations that the defendant and his
3 coconspirators engaged in which they talked about the charges
4 that they were making or intending to make. But even setting
5 that aside, having the information out there and the ability to
6 do that and the intent to do that and the history of doing that
7 is in itself likely dangerous.

8 Our basic view is that because of his history of
9 violating court orders, his history of basically committing
10 crimes and ignoring the directions of the court to -- on
11 probation -- to obey the law and to show up in court, that his
12 repeated violations of doing that, the exposure that he faces
13 in this case, his extremely skillful ability to manipulate his
14 use of the computers, which has been shown since his hack -- he
15 is a hacker. He's a convicted hacker. That in and of itself
16 shows an ability to use computers.

17 In his prior case he hid his identity and hacked into
18 a website. It was only discovered through various anonymous
19 communications that he made with others, and that's the exact
20 same offense that -- the same skills that he showed in this
21 case.

22 That given all of that, that shows that both that he
23 would have the propensity of flee, has a great incentive to
24 flee, that he has the ability to flee and to remain a fugitive,
25 the ability to use a computer and hide himself, but to steal

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1 information from others and also to mask his location and to
2 continue the conduct that he's done and that in that context,
3 there is just we don't think there is any set of conditions
4 that will ensure.

5 THE COURT: What do you say to Ms. Fink's argument
6 that she's not able to prepare adequately if he is detained?

7 MS. NIDIRY: I think the material is substantial, but
8 it is not, it's not rocket science. The chats are basically
9 communications that the defendant had with others about this
10 crime. Then there is electronic material in there that --

11 THE COURT: Is there something about the discovery
12 that's different from merely going through lots of documents?
13 I understand that the volume is large. But my question is is
14 there something about the way it's configured or is there
15 something about it that makes it particularly difficult to look
16 at? I mean I can read a chat room. I may not understand the
17 words, but.

18 MS. NIDIRY: I don't think so. I don't think -- like
19 most computer evidence that we have, it's produced in a
20 forensic format. So it is data that needs to be -- that's the
21 way we produce it. It's data that then needs to be
22 transformed, used through special expertise. It needs to be in
23 order to exploit that data.

24 That said, that's no different than any other case in
25 which we produce a computer hard drive. So in that sense, it

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1 is not, it is not that different. What needs to be done is
2 that the hard drive that's produced needs to be, through the
3 forensic assistance of an expert, needs to be transformed into
4 something that's readable.

5 And, again, that is, to the extent that they are
6 having difficulties doing that, we are happy to work with them
7 to try and get that done in an expeditious manner. But I don't
8 think that there is any reason that a defense lawyer should not
9 be able to review this material with the defendant in a
10 reasonable amount of time even if the defendant is detained. I
11 mean it's not anything unusual in terms of the kind of evidence
12 or the volume of the evidence from our perspective, and we
13 haven't heard anything to make us think that's the case.

14 THE COURT: Okay. Anything else?

15 MS. NIDIRY: No.

16 THE COURT: Ms. Fink.

17 MS. FINK: Ms. Kunstler, your Honor.

18 Do you want to start, Sarah? Okay.

19 Judge, the problem here is it's the government's
20 burden, and the thing about burden is is it's like evidence,
21 right. So what's happened here is Ms. Nidiry has been talking
22 to you about all the court orders that he violated. Where are
23 they? Have you seen them? I haven't seen them. What court
24 order?

25 Ms. Nidiry has been informed that I'm going to be

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1 seeking bail probably for the last two months. She made no
2 attempt to go to Chicago and to find out whether there were
3 warrants, whether there were court orders, what judicial
4 directions that he's supposed to have violated. None of this
5 is before you. The only thing that's before you, Judge, in
6 terms of any kind of evidence is what she says out of her
7 mouth.

8 THE COURT: I'm sorry, Ms. Fink. I have in front of
9 me a pretrial services report and the repository inquiry. We
10 base bail decisions on these things every day of the week.

11 MS. FINK: I understand, Judge, but when you make
12 allegations that the person has warrants, you want to see the
13 warrant. This was handed to us at 11 o'clock. There's no way
14 we can know anything about this, Judge. This is all in
15 Chicago. I would have to go to Chicago courts and pull the
16 files and see whether all of this is, for example --

17 THE COURT: I know you said that before. Is there
18 something --

19 MS. FINK: And it's not my burden.

20 THE COURT: Is there something that you wanted to say
21 in response --

22 MS. FINK: Certainly, Judge.

23 THE COURT: -- to the government's presentation.
24 Excuse me.

25 MS. FINK: Sorry, Judge.

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1 THE COURT: It makes it very difficult for the court
2 reporter if two people are talking at once. And I have full
3 confidence that when there are two of us talking, my voice is
4 taken.

5 MS. FINK: Judge, to ask the government about what we
6 need to do is to me not appropriate. This is an adversary
7 system. The government hasn't a clue how to defend cases.

8 THE COURT: I'm sorry, I don't believe I asked the
9 government how to defend the case.

10 MS. FINK: Well, you said how would we look at this
11 information.

12 THE COURT: They looked at the information.

13 MS. FINK: There's no way Ms. Nidiry can tell you what
14 I do.

15 THE COURT: That's why I asked you to get up,
16 Ms. Fink. Tell me if you disagree with what was said. It is
17 an adversary system. That's why I called upon you.

18 MS. FINK: Okay. Well, here I am, Judge.

19 THE COURT: Let's hear it.

20 MS. FINK: I don't want the government to tell you
21 what I have to do.

22 THE COURT: I'm sorry. I didn't ask that. I asked
23 about the factual reading of the evidence.

24 Do you have a response to that that you'd like me to
25 know about?

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1 MS. FINK: Yes.

2 THE COURT: Yes, ma'am.

3 MS. FINK: My response to that is that the government
4 is not defense and it's just like the same thing with Jencks
5 Act material. There's no way for the government to know how I
6 can use discovery.

7 THE COURT: Ms. Fink, that's not the question. The
8 question is what about the electronic evidence other than the
9 great quantity of it makes it so difficult to deal with.

10 MS. FINK: Because it is between people.

11 MS. S. KUNSTLER: I can speak to that a little bit.

12 MS. FINK: I'll let Ms. Kunstler.

13 MS. S. KUNSTLER: In our conversations with Access
14 Data and other computer experts and just in our own experience
15 trying to understand it on our own without the assistance of an
16 expert, basically what one of the experts said to us is that
17 it's kind of like the equivalent of examining hundreds of
18 thousands of pages of documents in different languages. It's
19 just we don't have the person there to help us understand.

20 THE COURT: Can I just understand what you're saying.
21 What you're saying is not that it's technically difficult to
22 open it, but that once you see it, the computer language being
23 used or the language among defendants being used is something
24 you don't really understand.

25 MS. S. KUNSTLER: The difficulty in opening it is

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1 resolved by having someone like Access Data set it up and open
2 it for us.

3 THE COURT: Right.

4 MS. S. KUNSTLER: We don't need --

5 THE COURT: It's not technical.

6 MS. S. KUNSTLER: No. We don't need Mr. Hammond to
7 open the documents for us.

8 THE COURT: We need to understand what they're saying.

9 MS. S. KUNSTLER: And not just how to read the
10 particular type of document, but what it means in the context
11 of other documents and other evidence.

12 THE COURT: What the language you see in front of you
13 means.

14 MS. S. KUNSTLER: Yes, and its relevance.

15 THE COURT: That's all I want to know. I got it.

16 MS. S. KUNSTLER: With respect to the government spoke
17 a lot about ability to flee, propensity to flee. I don't think
18 any of the violations that they made mention of establish that.

19 Mr. Hammond has never fled. He's always -- he didn't
20 change residence. He didn't disappear. He doesn't have a
21 passport. He doesn't have means to flee and he's never done
22 it. Missing a probation appointment when he was 21 years old
23 is not propensity to flee. I think more important is the
24 evidence that he has not fled. It's not something he's done.

25 With respect to dangerousness, I was a little bit

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1 confused by what Ms. Nidiry was saying about the information
2 being out there. If the information is out there, it's out
3 there whether Mr. Hammond's hand is in it or not or whether
4 he's in custody or not in custody. But the government really
5 hasn't addressed how a prohibition on computer usage doesn't
6 address this concern with respect to Mr. Hammond's ability or
7 Mr. Hammond's dangerousness in the future.

8 Again, with respect to ability or propensity to flee
9 despite, you know, there's ways to address that. There's
10 conditions that any lingering fear the Court or the government
11 may have about Mr. Hammond's ability to flee can be addressed
12 by strict supervision. It can be addressed by electronic
13 monitoring if the Court finds that to be necessary.

14 And if you give me one second, I know there's one more
15 point I wanted to address.

16 MS. FINK: Judge.

17 MS. S. KUNSTLER: I wanted to talk about the ability
18 to hide his identity online. That, again, if he doesn't have
19 computer access, any ability he may have had to hide his
20 identity online is not relevant for purposes of bail. But I
21 think what the government is alluding to when they talk about
22 ability to hide online is the ability to hide identity in
23 person, to misrepresent who you are in the real world, to be
24 able to produce or create false identity documents or
25 masquerade as another person. Mr. Hammond has never --

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1 THE COURT: I didn't understand that to be the
2 argument. I understood the argument to be that he might well
3 engage in unauthorized computer usage and that his ability to
4 hide his identity would limit the probation department's
5 ability to determine that such unauthorized computer usage had
6 taken place. That's what I understood the argument to be.

7 MS. FINK: Judge.

8 THE COURT: May I ask a question: Do we have any
9 other questions for Mr. Johnson or shall we thank him for his
10 attendance and allow him to go back to work?

11 MS. FINK: We spend a lot of time on the phone with
12 Mr. Johnson, so not in this courtroom.

13 THE COURT: Mr. Johnson, thank you for coming over.
14 We appreciate your help.

15 MR. JOHNSON: It's my pleasure, your Honor. Thank
16 you.

17 THE COURT: Thank you, sir.

18 MS. S. KUNSTLER: There's two different issues here
19 which is if he has no access to computers and he's confined to
20 his home save visits to our office, I don't understand how his
21 ability to be online or his ability to hide his identity online
22 is a concern if there's no computer where he is.

23 THE COURT: I'm no computer expert, but I understand
24 there's such things as internet cafes.

25 MS. S. KUNSTLER: If he's on home confinement and he

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1 comes to our office, I don't see the danger of him going to a
2 computer cafe. And even if he --

3 THE COURT: There's probably one between your office
4 and home.

5 MS. S. KUNSTLER: That's something he's never done.
6 We're hypothesizing about possible ways he could get around
7 supervision in ways that he's never demonstrated any propensity
8 to do. He was allowed to use computers last time he was on
9 supervised release. He used computers at work. He was allowed
10 to him use them at work. He was allowed to go on the internet.
11 This never happened. So I don't think hypothesizing about, you
12 know, the tiny hole that he might find if there's no propensity
13 to find it.

14 MS. FINK: Judge, when they arrested him, they seized
15 all his computers, right, and they have everything. They have
16 not come into court and said to you, here, look what was found
17 on the computer, he has a program that gets him ID. There's
18 nothing that they have been able to bring to this Court that in
19 any way supports their speculation.

20 He is a political dissident. He demonstrates. He
21 tries to tell people what he believes and what the government
22 is doing is not right.

23 THE COURT: He hacks into computers.

24 MS. FINK: Yes, absolutely, but they have his computer
25 and they have -- they just seized it and they went through it.

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1 They had a deprogrammer do whatever.

2 THE COURT: Last I heard they sell computers.

3 MS. FINK: What? Yeah, but the question is there's
4 nothing that supports this. There's no evidence that supports
5 that he would do that.

6 He doesn't have any passport. Where would he go,
7 Judge? There's nowhere to go. He has no money.

8 And what he's been doing is he has been sitting and
9 being very confrontational about what he believes. He's the
10 person -- he's Che. He's Nat Turner. He is the nuns who get
11 arrested every year.

12 THE COURT: I'm sorry, what's the relevance of that to
13 the bail factors?

14 MS. FINK: It's the First Amendment, Judge. It's a
15 political belief.

16 THE COURT: Counsel, what is the relevance of that to
17 the bail factors?

18 MS. FINK: What's the relevance, Judge?

19 THE COURT: Yes, ma'am.

20 MS. FINK: There's no evidence that the government has
21 been ever at this time or can convince, come into court and put
22 in front of this Court that he has ever attempted to flee, that
23 he has no programs that say that. He has no passport. He's
24 not going anywhere, Judge. His job is to represent his
25 politics. That's why he's in this courtroom. Whether he's

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1 guilty or not, we have to see. But until we can understand
2 what the evidence and see the relationship about who did what
3 here, what did he do --

4 THE COURT: Nobody is arguing with that, Ms. Fink.

5 MS. FINK: I understand, but there's no way --

6 THE COURT: Excuse me, we've gone on for a while.
7 It's helpful if we talk about the bail factors.

8 MS. FINK: Okay. Let me take him home to
9 Thanksgiving.

10 THE COURT: Thank you. Anything else?

11 MS. FINK: All right. Everybody who is going to
12 assume custody of him as an officer the court will call the
13 marshal service if he goes anywhere, Judge. He's not going to
14 go anywhere. We're all officers of the court.

15 THE COURT: Yes, ma'am.

16 MS. FINK: Right, and we all have an obligation. But
17 if he continues to be in jail, I can swear to this Court I
18 can't give him effective assistance of counsel.

19 THE COURT: Ms. Nidiry, counsel says that limiting
20 computer use is the answer to many of your objections.

21 MS. NIDIRY: I think that we would say part of the
22 problem is that you can't -- there's no way to confirm that he
23 is not using a computer. Computers are not just monitors.
24 There are smart phones. There are computers you can go to
25 Kinko's and use or Starbucks. It's not a situation where you

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1 can just say you can't use a computer and we can be sure he's
2 not using a computer. And given his history of ignoring court
3 directives in the past, we don't believe there's any reason to
4 think he would obey the Court's directives not to use a
5 computer now.

6 And beyond that, I think that here, unlike in his
7 prior conviction, he is facing a -- he has a much greater
8 incentive to flee. He is facing a much more substantial amount
9 of time based on his criminal history and the scope of the
10 conduct and given that he has a great incentive to violate
11 court orders and to flee.

12 And, in addition, I think that in terms of the danger,
13 what we were talking about is both his ability to, in terms of
14 his computer technical know-how, there is both his ability to
15 mask his location and computer use and, therefore, to hide the
16 fact that he is using a computer and also to obtain others'
17 identity information or financial information and were he to
18 flee to stay hidden.

19 THE COURT: To?

20 MS. NIDIRY: To obtain's other financial information
21 and personal information that he has already shown that he can
22 do and that he would use. So he could use other people's
23 credit cards or bank accounts, etc., because he can steal
24 those.

25 With regard to Ms. Fink's point about how we haven't

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1 shown that he has used any of this, this is not an evidentiary
2 hearing so we haven't. But we have in fact shared with defense
3 counsel already that -- at the very least the screen shots that
4 were open on his computer at the time of his arrest indicate in
5 addition to stolen information, various personal information,
6 credit cards, etc., the fact that he is using a dot onion, dot
7 Tor on that particular laptop that was his. That was all
8 revealed in the screen shots that we provided in discovery and
9 met with defense counsel and tried to explain it to a certain
10 extent.

11 It really demonstrates on his own computer, the laptop
12 he was using at the time of his arrest, he was actually using
13 those anonymizing computer mechanisms that he's alleged to have
14 used in the course of the offense generally. So there is, in
15 fact, and that's just a piece of it, there is a lot more out
16 there, but that's just a piece of what demonstrates that he is
17 somebody who has a repeated history of using computers for ill,
18 for stealing information, for hiding his use of those
19 computers, and violating court orders. So in a court order not
20 to use a computer, there is no confidence that he would
21 actually follow it.

22 And, in this case, he has a strong incentive to flee
23 given the exposure that he faces. So, it is materially
24 different than any of his prior encounters with the law.

25 THE COURT: Thank you.

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1 Anything else? Yes, ma'am.

2 MS. S. KUNSTLER: Your Honor, Mr. Hammond has never,
3 there's no allegation that he ever violated a court order by
4 using a computer when he was not supposed to. The masking
5 software that Ms. Nidiry referenced, Tor and onion, are
6 programs that anyone -- they don't take any sophistication to
7 use. Anyone can download them to hide their identity. Many
8 people charged with computer sex crimes use them to hide their
9 identity. Many of the same people are allowed out -- I'm
10 sorry, your Honor -- are allowed out on bail with restricted
11 computer usage.

12 We mentioned before how restricted computer usage is
13 common for sex offenders and others charged with computer
14 crimes. Any one of those people could conceivably, if they
15 wanted to, duck into an internet cafe. But yet time and time
16 again, these restrictions are found adequate to mitigate the
17 danger.

18 THE COURT: I thought the argument was on one hand
19 this defendant possesses the ability to make his use anonymous,
20 which you tell me that that's no great shakes. What I
21 understood the danger to the community argument to be that what
22 this defendant has that many people, most people do not have is
23 the sophisticated ability to hack into websites or whatever and
24 to find personal information which could then be revealed. And
25 as I understand what the papers say about the screen shots,

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1 that some of this personal information was in fact on this
2 defendant's screen at the time he was arrested.

3 So, I thought it was two-fold. One, the ability to
4 mask one's use, but the very sophisticated ability to get in
5 and to get other people's information or to do mischief.

6 MS. S. KUNSTLER: Thank you, your Honor, for
7 clarifying that.

8 If he is on home confinement without a computer in his
9 residence, the idea that he would be able to, you know, hit an
10 internet cafe on the way to our office and do this kind of
11 sophisticated work in the few minutes he has to get from one
12 place to another I think doesn't constitute a danger.

13 I've worked with pretrial services on getting
14 appointments for people to come to our office when they're on
15 home confinement, and what they do is they carefully work out
16 exactly how long it will take for that person to get from point
17 A to point B, our office. You tell them how long they're going
18 to there, and then they work out how long it would take them to
19 get back.

20 This extra time that Mr. Hammond is going to have to
21 go out there and seek out, mask his identity on a public
22 computer, seek out victims and commit crimes, which he's shown
23 no propensity to commit and never has done in terms of using
24 that, but, I don't think the government meets their burden
25 there.

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1 I think that conditions exist. I think that if he's
2 on home confinement, if he does not have a computer, if he's on
3 monitoring, if pretrial services knows where he is, knows where
4 he's going, and given the lack of any demonstrated propensity
5 to violate in this way ever, I think the conditions exist that
6 will satisfy, that make him not a danger to the community and
7 will satisfy his appearance in court.

8 THE COURT: Anything else?

9 MS. FINK: Just, Judge, and us, the members of your
10 court, right. I'm a member of this court. I have an
11 obligation. I'm an officer of the court. If he were to walk
12 out, I have a moral, I have an ethical obligation based on my
13 oath, right, to call the marshals and tell them he's going. So
14 does Mr. Smith. So does everybody around him that we are
15 asking you to bail to. This was the situation on a seditious
16 conspiracy.

17 THE COURT: Yes, ma'am.

18 MS. FINK: And I tell the Court that the government
19 has not provided you with the court orders that he whatever,
20 not provided you with the warrants. There's nothing, right, of
21 evidence that backs any of this up.

22 And depending on what report, I would at least like to
23 see what the government is basing its statements on, the
24 warrants, court orders, the judicial directives that he didn't
25 violate, the stuff in his computer, evidence, Judge, clear and

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1 convincing by a preponderance, what, but not just statements
2 out of their mouths.

3 THE COURT: Thank you.

4 Anything else?

5 MS. NIDIRY: No, your Honor. Thank you.

6 THE COURT: Very well.

7 Thank you, counsel, for your presentations. As we all
8 know, the bail factors are set out in 18 United States Code
9 Section 3142(g).

10 Here the first thing to be considered is whether or
11 not the defendant is a flight risk.

12 Contrary to the situation in the other cases in which
13 this defendant was accused, his maximum jail sentence here by
14 statute is 37 and a half years plus a mandatory consecutive
15 two-year term of imprisonment. If we went by the guidelines,
16 of course, we would be at the very bottom at 360 months to life
17 if the allegations in the indictment are sustained by a jury.
18 So this is materially different from the prior cases in which
19 Mr. Hammond was involved.

20 Another of the factors to be considered is the weight
21 of the evidence against the defendant. Here, as set out in the
22 complaint, Mr. Hammond engaged in extensive communications with
23 a cooperating witness in which and he and his coconspirators
24 are said to have made numerous detailed admissions about their
25 involvement in conducting and then revealing the fruits of

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1 various hacks which they admitted to having undertaken.

2 In addition, as we have been discussing for so long
3 this morning, there is very substantial evidence on the
4 defendant's hard drive which apparently shows what we've been
5 discussing as his ability to mask his identity and location,
6 names and addresses of folks whose information has been
7 obtained, tax returns and the like.

8 In addition, as I understand it, the screen shots that
9 were obtained at the time of Mr. Hammond's arrest showed other
10 individuals' information and the ability to mask, for
11 Mr. Hammond to mask his identity.

12 In addition, on the flight risk issue, even with all
13 of the back and forth today, this defendant has been shown to
14 have a lack of regard for legal authority. At the very least
15 it is clear -- and let me say this, this is not an evidentiary
16 hearing. So the fact we do not have warrants and the like is
17 of no moment. Decisions are made in this court every day based
18 on pretrial services reports and the FBI repository inquiry
19 documents that we all have.

20 At the very least, it has been shown that between 2006
21 and the present, the defendant failed to appear for court
22 appearances on numerous occasions, warrants were issued, more
23 recently failed to show up at probation for an entire month.

24 In addition, during the time the defendant was on some
25 sort of court supervision, whether federal supervised release

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1 or state parole, the defendant continued to commit crimes. The
2 prior offense to which the defendant --

3 MS. FINK: Are we having an earthquake right now?

4 THE COURT: I think it's locusts coming next after the
5 hurricane. We already had an earthquake last year.

6 Following the federal crime that the defendant was
7 convicted of, which is really the same crime as this one only
8 on a smaller scale, again, the defendant continued to commit
9 crimes.

10 Similarly, the defendant's drug use, of course, is a
11 violation of not only the law, but of his various types of
12 supervision. And apparently he admitted to smoking marijuana
13 every other day, most recently, the day of his arrest.

14 All of this indicates a lack of regard for legal
15 authority and certainly does not indicate any confidence that
16 the defendant will comply with any terms and conditions of
17 supervised release.

18 In addition, I note that the record before us shows a
19 hostility to law enforcement, including posting various types
20 of personal information of law enforcement individuals online,
21 which as we all know could lead to a dangerous situation with
22 respect to those individuals. There was an exchange or so set
23 forth in the government's papers where it certainly looks like
24 there is hostility to law enforcement being expressed.

25 In addition, because of the defendant's ability to

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1 manipulate computers, he certainly has the ability to flee.
2 Whether or not he himself in the past used stolen credit card
3 information isn't really the test. His ability to access that
4 information and, according to the complaint in this case, the
5 discussions of the defendant and the alleged coconspirators
6 about intent to use that information certainly demonstrates the
7 defendant's ability to obtain money and other means to flee
8 while masking his identity and his location.

9 In sum, on this factor, I agree with the
10 recommendation and assessment of the pretrial services officer
11 that there is a significant danger of nonappearance.

12 With respect to the defendant's danger to the
13 community, as we have discussed at length this morning, the
14 defendant not only has the ability to hide his computer usage,
15 which, crediting the defense, is not so special, but he does
16 have highly sophisticated computer skills that allow him to
17 hack into various databases to access other folks' information
18 and certainly to reveal that information.

19 At the very least, we know that the screen shots which
20 were on his computer at the time of his arrest contained
21 sensitive personal information of other individuals and the
22 danger to them not only financially, but, in the case of law
23 enforcement individuals, their personal danger of the
24 revelation of that information, poses a very severe danger to
25 the community.

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1 With respect to the argument that other individuals
2 who engage in computer crimes are often bailed, the ability
3 that Mr. Hammond has to hack into other computer websites and
4 the like is not something which is common among, for example,
5 the folks who engage in online sex crimes. It is that unique
6 sophisticated ability that makes Mr. Hammond different from
7 those individuals. In addition, in most cases, those
8 individuals do not have the history that Mr. Hammond
9 demonstrates of a lack of respect for legal orders.

10 Accordingly, on the issue of the danger to the
11 community, I also agree with the assessment of the pretrial
12 services department that the defendant poses a very substantial
13 danger to the community.

14 With respect to the defendant's due process argument,
15 I note that there is no bright line test in this circuit for
16 the time of pretrial detention. But more importantly, as to
17 the reason for the period of time that counsel says is required
18 to prepare for trial, that reason is not something that falls
19 on the government's head. As we I think have discussed here
20 today, it is the inherent complexity of the sophisticated
21 computer crimes that this defendant is accused of committing
22 that necessitates the extensive review that counsel says is
23 going to take a long time. I think we've established today
24 that there's no technical stumbling block to counsel and the
25 defendant's access to the information. Rather, it is the

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1 manner in which the defendant and the alleged coconspirators
2 are said to have conducted the criminal enterprise that
3 requires the defendant to explain it to counsel. That's not
4 really on the government's head; that's on the defendant's
5 head.

6 And, thus, so far as I'm able to see now, there is no
7 due process violation in permitting counsel as much time as
8 counsel says is necessary to review the materials and to
9 prepare for trial.

10 Accordingly, I find as the pretrial service officer
11 has recommended that there are no conditions or combination of
12 conditions that will reasonably assure either the defendant's
13 appearance in court or the safety of the community.

14 Accordingly, the application for bail is denied.

15 Counsel, is there anything further today?

16 MS. FINK: Judge, I'd just like to point out that the
17 pretrial interview took place eight months ago.

18 THE COURT: What are you telling me that for?

19 MS. FINK: I'm telling you that his current situation
20 and the current information is not reflected on what you've
21 looked at.

22 THE COURT: Is there some current information that --

23 MS. FINK: I don't know, Judge.

24 THE COURT: Excuse me. Is there some current
25 information that you wanted to bring to my attention?

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1 MS. FINK: No, Judge. I brought it all to your
2 attention, all the surety and whatever. But you're relying on
3 today on November 20, 2012 --

4 THE COURT: Ms. Fink, I'm inviting you to tell me what
5 else there is out there.

6 MS. FINK: Well, Judge, I'm probably going to make a
7 motion for reargument based on what the Court has just said and
8 all the information. And after that is denied, I'm going to go
9 to the Court of Appeals.

10 THE COURT: Of course, ma'am. I'm just offering you
11 the opportunity to tell me whatever you think would be revealed
12 in a current pretrial services interview.

13 MS. FINK: Okay. I will take that opportunity after
14 I've reviewed what happened today. I would ask the Court to
15 order the transcript provided to us expedited.

16 THE COURT: Yes, ma'am. It is so ordered.

17 MS. FINK: Thank you.

18 And Sarah is in better shape than me.

19 MS. S. KUNSTLER: I apologize. There is one thing
20 that your opinion brought to mind that I just wanted to raise
21 which is that I know in our papers we list a number of
22 defendants, similarly situated defendants in computer hacking
23 cases who were allowed out on bail subject to computer
24 monitoring apart from the people that use computers to commit
25 sex crimes. And I don't think the government has proven today

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1 that his usage of computers is any more sophisticated, although
2 they said his usage is sophisticated, I don't think they've
3 proven it's any more sophisticated than the PayPal defendants
4 or any other people charged with computer hacking crimes. So I
5 just wanted to put that on the record.

6 THE COURT: Does the government wish to respond?

7 MR. BROWN: Briefly, your Honor.

8 MS. S. KUNSTLER: I'm sorry. You can respond to me.
9 I'm sorry.

10 And I believe many of his codefendants in this very
11 case have also been released on bail. And, again, I don't know
12 the sophistication of their computer usage relative to his, but
13 I don't think the government has put forward any proof that
14 there's a difference there.

15 THE COURT: Is there someone other than Mr. Monsegur?

16 MS. RATNER KUNSTLER: There are four other, I believe,
17 defendants in this case. Many of them are not in this
18 jurisdiction, Judge.

19 THE COURT: Then how were they released?

20 MS. RATNER KUNSTLER: They were released by the
21 courts.

22 THE COURT: In --

23 MS. RATNER KUNSTLER: In their own jurisdictions.

24 THE COURT: Okay. Fine.

25 Does the government wish to respond?

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1 MR. BROWN: Just briefly, your Honor.

2 For example, with respect to the PayPal defendants who
3 I think are the bulk of the defendants that defense counsel is
4 referring to, in that case the defendants are alleged to have
5 downloaded a tool that was widely available on the internet
6 called the Low Orbit Ion Cannon, that's what they call it, or
7 the LOIC. And the LOIC essentially allows a defendant to push
8 a button and participate in what's called a distributed denial
9 of service attack.

10 And essentially what that is, as your Honor I believe
11 already knows, is that's a bunch of computers asking a target
12 computer for information and overwhelming the target computer,
13 and through this you simply download this LOIC. You hit the
14 button, you automatically participate. It's not rocket
15 science. In that case, the defendants didn't even attempt to
16 hide themselves on the internet. The reason why they were
17 caught is because the LOIC uses their own IP addresses to make
18 these requests. That's why they were caught so easily.

19 But just in generality, your Honor, the defendants in
20 all the other cases that are referred to did not engage in the
21 wholesale data destruction that Mr. Hammond is alleged to have
22 engaged in here. As your Honor knows, he is alleged to have
23 deleted massive volumes of data from Stratfor. He engaged in
24 exponentially more sophisticated computer hacking.

25 I'll leave it at that unless your Honor has any more

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1 questions.

2 THE COURT: Anything else, Ms. Kunstler, on that?

3 MS. S. KUNSTLER: Nothing other than that I think Tor
4 is also something that you can download and use. I don't see
5 anything presented that -- I still don't see Mr. Hammond's
6 sophistication relative to the sophistication of the other
7 defendants in these cases.

8 THE COURT: With all due respect, I do. The hacks
9 that are alleged here and, in addition, the material that was
10 on the screen shots of his computer at the time of his arrest
11 do indicate a sophistication and sophisticated ability to hack
12 in and to get out other individuals' private information. So,
13 I disagree.

14 Anything else, counsel?

15 Thank you, ladies and gentlemen.

16 Do we have a conference date, friends?

17 MS. NIDIRY: I think we need to set a conference date.

18 THE COURT: When would you like to -- would you confer
19 with counsel and let me know when you'd like to return, please.

20 MS. FINK: Judge, I think we're going to be returning
21 on a motion to reargue on this.

22 THE COURT: But we need to set a regular conference
23 date.

24 MS. FINK: Why don't we say --

25 MS. NIDIRY: Thirty days about.

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1 THE COURT: Do you want January?

2 Use your off the record voice.

3 MS. FINK: The 18th of December, Judge? That's a
4 month.

5 THE DEPUTY CLERK: How is 11 a.m.

6 MS. FINK: Have a good Thanksgiving, Judge.

7 MS. NIDIRY: We would request time be excluded under
8 the Speedy Trial Act between now and December 18 in order to
9 permit --

10 THE COURT: In order to permit counsel to continue
11 preparing for trial and reviewing the discovery, time between
12 today and December 18 is excluded from calculation under the
13 Speedy Trial Act in the interest of justice.

14 Thank you, counsel. Good morning or good afternoon by
15 now.

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